

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOSE STRAYHORN,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:20-CV-240-NAB
)	
KILOLO KIJAKAZI,)	
Commissioner of the Social Security)	
Administration, ¹)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This case is before the court on Commissioner Kilolo Kijakazi’s (“the Commissioner’s”) Motion to Reverse and Remand the case to the Commissioner for further administrative action pursuant to sentence four of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). [Doc. 21.] Plaintiff has filed a response stating that he consents to the motion. [Doc. 22.] Having fully considered the arguments set forth by the Commissioner, the court grants the Motion to Reverse and Remand.

On November 13, 2020, Plaintiff filed a complaint seeking review of the Commissioner’s decision that Plaintiff was not under a disability within the meaning of the Social Security Act. [Doc. 1.] The Commissioner filed his answer and a certified administrative transcript on October 23, 2020. [Docs. 19, 20.]

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted, therefore, for Andrew Saul as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

On June 15, 2021, the Commissioner filed the instant motion to reverse and remand the case to the Commissioner for further action under sentence four of section 205(g) of the Social Security Act, which permits the court “to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner, with or without remanding the cause for a rehearing.” 42 U.S.C. § 405(g). The Commissioner represents in his motion that upon review of the record, the Appeals Council failed to consider new evidence that was submitted to the Social Security Administration on July 23, 2020 as part of Plaintiff’s request for review, despite the Plaintiff properly notifying the administrative law judge (“ALJ”) of his attempts to obtain relevant outstanding records from the Bureau of Prisons because “the new evidence was not associated with Plaintiff’s file or available for review . . . prior to the Appeals Council’s denial, which was issued on September 26, 2020”² resulting from “physical office closures caused by the worldwide pandemic.” [Doc. 21 at 1.] The Commissioner states that “[o]n remand, the agency will instruct the ALJ to ensure that the record is fully developed in accordance with 20 C.F.R. § 416.912, offer the claimant the opportunity for a hearing, consider the additional evidence submitted to the agency, and issue a new decision.” *Id.* at 1-2.

Upon review of the administrative transcript, including Plaintiff’s evidentiary submission and the Appeals Council’s decision, and the Commissioner’s motion, the court agrees with the parties that this case should be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g).

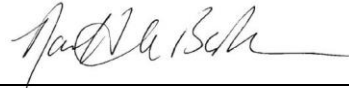
Accordingly,

IT IS HEREBY ORDERED that the Commissioner’s Motion to Reverse and Remand [Doc. 21] is **GRANTED**.

² The Appeals Council’s decision is dated September 16, 2020. [Doc. 20-3 at 2.]

IT IS FURTHER ORDERED that a Judgment of Reversal and Remand will issue contemporaneously herewith remanding this case to the Commissioner of Social Security for further consideration pursuant to sentence four of 42 U.S.C. § 405(g).

IT IS FURTHER ORDERED that upon entry of the Judgment, the appeal period will begin which determines the thirty day period in which a timely application for attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, may be filed.

A handwritten signature in cursive script, appearing to read "Nannette A. Baker", written in black ink.

NANNETTE A. BAKER
UNITED STATES MAGISTRATE JUDGE

Dated this 16th day of July, 2021.